LEE SOH CHOO

v.

TAN KET HUAT

HIGH COURT MALAYA, KUALA LUMPUR
SITI NORMA YAAKOB J
[ORIGINATING SUMMONS NO. F 2052 OF 1985]
7 APRIL 1986

***FAMILY LAW**: Custody - Principles which will be considered by a Court in a custody application - Welfare and interests of the children.*

The applicant (Lee Soh Choo) and the respondent were married in 1980 and had two children. In 1982, the parties experienced matrimonial difficulties and the cause of those problems are not determinable because of the conflicting affidavit evidence. Both parties now seek custody of the children of the marriage.

Held:

[1] After considering both affidavits, the Court concluded that the applicant (mother) would not be able to care for the children herself and instead would be relying largely on her relatives to do so. The Court took the view that this would not contribute towards the welfare and proper upbringing of the children.

[2] The Court took into account all the facts and circumstances of the case and held that the welfare and interests of the children would be best served if they remained at the matrimonial home with their father.

[3] Access was granted to the applicant every Sunday from 9 a.m to 6 p.m. The applicant was also given liberty to apply if there is a change in circumstances.

[Application dismissed. Reasonable access to applicant.]

For the applicant - Balwant Singh Sidhu; M/s. Balwant Singh Sidhu & Co.
For the respondent - T.F. Chin; M/s. Chin & Rakan-Rakan

JUDGMENT

Siti Norma Yaakob J:

The applicant and the respondent in this application for custody were married on 7 June 1980 and from this union, a daughter was born on 2 December 1980 and a son on 3 May 1982. It is not disputed that since 1982, the applicant and the respondent had been experiencing matrimonial problems, and from their affidavits, there are conflicting reasons given as to the cause of such problems. The applicant states that she had been mistreated and assaulted by the respondent and on 6 June 1985, he had beaten her up, drove her out of the matrimonial home and she was not able to take the children with her. For this single act of cruelty, she relies on a police report made on the same evening following the assault. The respondent on the other hand alleges that the applicant had never been much of a mother to the children as she had neglected them and had spent a lot of time outside the matrimonial home. He disputes the contents of the police report and maintains that the cause of her leaving the matrimonial home had been highly exaggerated by the applicant. Whatever was the true cause of her leaving the matrimonial home on 6 June 1985, it must have been the culmination of their unhappy differences and it was following this that the applicant filed the present proceedings for custody of the 2 children.

Although the applicant has given an address in Sg. Besi as her present place of abode, it is not clear to whom the premises belong to, or whether she is occupying the premises as a tenant, or whether the premises is the home of her brother and his family in whose care she intends to leave the 2 children if custody is granted to her. As an alternative, she is also considering taking the 2 children to live with her parents in Kedah. Presently she works at Damansara Jaya selling cosmetics as she needs a job to maintain herself. From her affidavit, I concluded that the applicant will not be able to care for the children herself and will have to rely largely on her brother and sister-in-law or on her parents in Kedah. That being the case, I do not consider the uncertainty as to where eventually the children will be housed can work towards the welfare and the proper upbringing of the children.

On the other hand, the children are still at the matrimonial home, an environment they have been used to and adapted to since they were very young. They are being taken care of by the respondent and his mother and the elder of the 2 children attends a kindergarten that has reported that she has adapted very well to school life and enjoys going to school. As for the younger child, there is no evidence of any ill treatment and for that matter, there is no proof that the health of any them is in any way threatened by their continuing to live with their father.

I am fully aware that there is no substitute for a mother's love and attention, especially when the children are of tender years but where a mother like the applicant has shown that she will not be able to devote her full attention to them but will greatly rely on others to do so, in the interest and welfare of the children, I have considered that their custody should continue to remain with the respondent. A change at this point of time would be too upsetting to them especially so in this case where the applicant is still quite undecided whether to send them to her mother in Kedah or to leave them with her brother and his wife in Kuala Lumpur. In dismissing her application, I had however granted her access to the children every Sunday from 9.00 a.m to 6.00 p.m. and should circumstances change that warrant a change in custody, the applicant is at liberty to apply.

Also found at [1986] 2 CLJ 143